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Regulatory Reform and
Regulatory Processes

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Managing Regulation in Canada

Regulatory Reform and Regulatory Processes

Treasury Board Secretariat
Program Branch
Regulatory Affairs

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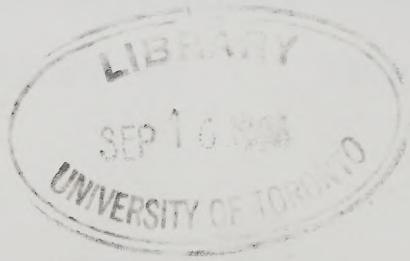


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Message on regulatory reform

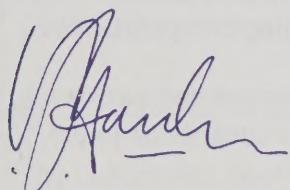
With globalization, economic prosperity is increasingly linked to world events that are beyond the control of any one country. This of course directly affects nations like Canada, with dynamic and open economies. But globalization also gives Canada an advantage – we are well-placed to compete abroad. To ensure we do as well as possible, Canadian governments help their citizens and businesses to compete in the world marketplace.

Where does regulatory reform fit into this equation? Governments in Canada want to ensure that regulations, when called for, do not distort trade or impede economic efficiency. They also want to maintain and improve the health, safety and environmental protections that Canadians have grown to expect.

So, regulatory reform means ensuring good quality regulations. It also means managing the aggregate *effects* of regulations efficiently. Within Canada, all orders of government recognize that overlap, duplication and conflicting regulations undermine economic growth and prosperity. In the Agreement on Internal Trade, the federal, provincial and territorial governments provided an example of their commitment to freeing up the movement of people, goods, services and investments within Canada in order to make our domestic market as open and integrated as possible.

This publication is another example. It is a cooperative effort that highlights each jurisdiction's approach to reform and adds insights. The regulatory process of each jurisdiction is detailed, too, because a number of reform efforts have changed the processes themselves.

As this publication demonstrates, governments in Canada want to improve their regulatory systems to provide a rational, responsive and predictable regulatory environment for businesses and citizens alike.

A handwritten signature in black ink, appearing to read "V. Peter Harder".

V. Peter Harder
Secretary
Treasury Board of Canada
Secretariat

Some keys to reform: a comment from Ontario

Jim Evans has been with the Clearing the Path Project in Ontario since the early 1990s. In his capacity as Executive Director he has gained valuable experience that provides an interesting perspective on regulatory reform.

"How law works, not what it aims to do, is what is driving us crazy" says Philip Howard in his book *The Death of Common Sense*. Mr. Howard is on to something here. The business community in particular continues to argue that it is competitively disadvantaged by overlapping government regulation. But it is the associated regulatory administration and process, the legendary government red tape, that is suspected of being the most significant part of this problem. Further, it is often believed that the administrative effort of complying with government regulation is not justified by the policy goals behind the regulation in place. Government need not abandon appropriate and necessary regulations, but it is critical that we avoid cumbersome, costly and ineffective regulatory processes.

Faced with growing fiscal constraints and the increasingly global nature of business problems and opportunities governments must move away from the traditional interventionist approach to regulation. This means that new and alternative approaches to regulation are required – approaches where the private sector will play an increasing role in the delivery of government services, albeit within a framework of government compliance and performance standards. This does not necessarily mean deregulation, but it does mean employing a broad spectrum of solutions to achieve regulatory goals, including private sector solutions such as: advertising, education, teamwork, partnerships, associations, interoperability, the use of quality standards, and warranties.

Employing alternatives to regulation often requires co-operation with other jurisdictions and other levels of government, and increasingly involves industries and their associations in more innovative processes than the cumbersome registration, reporting and compliance management structures of the past. It cannot be stressed enough that the new realities of fiscal constraint and globalization require governments to find ways to meet valid regulatory goals without unduly harming competitiveness.

This publication is a step in the right direction. It is a means through which we can compare notes, and learn to develop the process-based solutions that will allow us to make a contribution to the critical search for more innovative approaches to regulation, together.

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USEFUL INFORMATION

Where this publication came from

This document builds on two earlier publications produced by Regulatory Affairs at the Treasury Board of Canada: *How Regulators Regulate* and *Regulatory Reform Initiatives in Canada*.

Regulatory Affairs would like to thank the many people in the federal, provincial, and territorial governments who, through their partnership, helped make this project possible.

What's in this publication

Each jurisdiction has its own "chapter," with these two headings:

- REFORM: how each government is managing its regulatory reform effort; and
- PROCESS: how each government makes regulations.

The publication reflects the fluid nature of regulatory reform; headings may not be used consistently. But most jurisdictions will use the following subheads:

REFORM	PROCESS
<ul style="list-style-type: none">- How we got started- Our aim- Where we've been- Where we are now- Next steps- Lessons we can share	<ul style="list-style-type: none">- The approval process- Planning- Drafting- Submission and ministerial approvalExecutive Council approval- Legislative approval- Registration and publication- Notification and public consultation- Evaluation

The publication does not aim to assess the relative effectiveness of the different systems. If you would like more information on the reform efforts, policies, and processes described here, consult the list of principal contacts provided for at the back of the document.

How we gathered the information

Each jurisdiction prepared and contributed material following an outline to which everyone had agreed. Input from each jurisdiction was consolidated and returned for comments. Treasury Board of Canada edited the texts for consistency.

What is a regulation?

The term "regulation" is used broadly in this document to include the full range of legal instruments by which governing institutions, at all levels, impose obligations or constraints on private-sector behaviour. Constitutions, parliamentary laws, subordinate legislation, decrees, orders, norms, licences, plans, codes, and even some forms of administrative guidance can all be considered "regulation." For example, a typical regulation might limit the speed on a province's highways to 100 km/h. Other regulations might limit the concentration of a toxic effluent that a plant can discharge into a waterway, specify the minimum wage for workers, or prescribe minimum or maximum amounts of additives in the food we eat.

Why regulatory reform?

For some years, "regulatory reform" has grown in importance in developed countries. Why? Mostly because the increasing use of regulation by governments has large costs, as well as great benefits. While there are no hard numbers, the OECD believes that the cost of regulation may be as much as 10% of GDP for some of its members¹. Even if we were to assume that benefits exceed costs for all regulations, the magnitude of costs explains why OECD countries have sought to improve the cost-effectiveness of their regulations. For governments in Canada, as elsewhere, a further factor underlying reform has been decreasing resources. Budget restraint has forced a re-examination of our regulatory business. "Alternatives" and "streamlining" are the new buzzwords, and traditional command and control regulation is quickly becoming less attractive.

Economic ministries or central agencies are leading regulatory reform in Canadian governments, driven by the need to decrease costs for business and to "smarten" regulatory management.

¹ OECD, Public Management Committee (1995), *Control And Management Of Government Regulation*, p. 4

FEDERAL GOVERNMENT

Reform

How we got started

In the 1970s and early 1980s, governments began to realize that they needed to manage regulations better. This realization was manifest in the introduction of such instruments as the Socio-Economic Impact Analysis (SEIA), (1978) which applied to all major new regulations in the areas of health, safety and fairness. Also, in the late 1970's, the Economic Council of Canada was tasked to undertake a series of specialized studies to review the effects of regulatory action at all levels of government.

At their 1978 summit, G-7 members spoke out in favour of regulatory reform. In Canada in 1980, the House of Commons' Special Committee on Regulatory Reform chaired by James Peterson produced 29 recommendations for improving regulation management. Six years later, the federal government named a minister responsible for regulatory affairs. At the same time, there were major de-regulatory initiatives in certain sectors such as air transport. In 1991, the President of the Treasury Board became the responsible minister and, the following year, the Government of Canada Regulatory Policy was adopted. (A detailed account of reform efforts of the federal regulatory process can be found in W.T. Stanbury's 1992 report on the subject.²⁾ In 1994, the government announced the *Federal Regulatory Reform Agenda*, part of which included an about to be updated regulatory policy. This note summarizes much of the *Agenda*.

Our aim

The (updated) 1995 Regulatory Policy is designed to ensure that use of the government's regulatory powers results in the greatest net benefit to Canadians. To meet this goal, the federal government works in partnership with industry, labour, interest groups, professional organizations, other governments, and interested individuals.

The policy requires that, when regulating, regulatory authorities demonstrate that

- a problem or risk exists, that federal government intervention is justified, and that regulation is the best alternative;
- Canadians are being consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs;

² Stanbury, W.T. (1992) "Reforming the Federal Regulatory Process in Canada 1971-1992" in House of Commons, *Minutes of Proceedings and Evidence of the Sub-Committee on Regulations and Competitiveness of the Standing Committee on Finance*, Third Session of the Thirty-fourth Parliament, 1991-92, Issue No. 23

Also see: Stanbury, W.T. (1992) "Efforts to Reform the Federal Regulatory Process in Canada" in Tom Hopkins (ed.) *Regulatory Policy in Canada and the United States* (Rochester, N.Y.: Rochester Institute of Technology), pp. 43-74; A6-A26.

- the benefits outweigh the costs to Canadians, their governments, and businesses. In particular, when managing risks on behalf of Canadians, regulatory authorities must demonstrate that the limited resources available to government are being used where they will do the most good;
- they have minimized adverse impacts on the economy's capacity to generate wealth and employment and that they have not imposed an unnecessary regulatory burden. In particular, regulatory agencies must show that
 - (a) information and administrative requirements are limited to what is absolutely necessary, and that these requirements impose the least possible cost;
 - (b) they have addressed the special circumstances of small business; and
 - (c) they have considered proposals for equivalent ways to conform to regulatory requirements.
- they have respected intergovernmental agreements and that they have taken full advantage of opportunities for coordination with other governments and agencies;
- systems are in place to manage regulatory resources effectively. In particular, regulatory agencies must show that
 - (a) they have followed regulatory process management standards;
 - (b) they have articulated compliance and enforcement policies, as appropriate; and
 - (c) they have approved resources that are adequate for discharging enforcement responsibilities effectively and for ensuring compliance when the regulation binds the government.

Treasury Board Secretariat monitors the performance of regulatory authorities and the effectiveness of this policy.

Where we've been

In 1992, the government launched departmental and parliamentary reviews of regulations.

1. The **departmental regulatory reviews**: In these reviews, departments examined their existing regulations through public consultations and publicly re-justified their regulatory programs. They also worked to determine the effect that their regulations had on Canadian competitiveness and identified ways of improving regulatory programs, processes, and intergovernmental collaboration.

While departments managed their own reviews, Treasury Board Secretariat (TBS) supported them by providing guidance and promoting information exchange.

Departments and agencies completed their reviews of their existing regulations in June 1993 and set up a schedule of revocations and revisions for the next five years. Implementation continues and is being closely tracked. According to the most recent information, 835 regulatory revisions and revocations will take place between 1993 and 1998.

The reviews also renewed the movement toward federal/provincial harmonization in areas such as transportation and agriculture, and toward increased collaboration between government and industry.

2. The **Parliamentary review**: This review was designed to determine the impact of federal regulation on Canadian competitiveness. The Standing Committee on Finance identified six areas for change. It recommended:

- better analysis so that regulatory goals can be achieved more effectively at lower costs;
- greater stakeholder involvement in defining goals and determining how to achieve them;
- more flexible approaches to defining and measuring compliance with goals;
- more collaboration with other governments in Canada and abroad;
- better coordination among federal departments; and
- increased participation by parliamentarians.

Where we are now

In the fall of 1994, the *Federal Regulatory Reform Agenda* became a key item in the government's **Jobs and Growth** initiative. Following are some of the current highlights of the initiative:

- In addition to implementing the results of the above-mentioned regulatory reviews, the government has given priority to improving regulation for six selected sectors of the economy: biotechnology; health, food, and therapeutic products; mining; the automotive industry; forest products; and aquaculture. The objective has been to improve regulatory efficiency – thereby fostering competitiveness, job creation and growth – in these six sectors of the economy.
- For most regulatory proposals, regulatory agencies already use a benefit-cost analysis to assess potential impacts on labour, consumers, and other sectors of the economy. The *Agenda* focused attention on the newly introduced Business Impact Test (BIT). The BIT is an interactive software-based tool designed to help regulators ascertain exactly what impact proposed regulations will have on the private sector. By the end of 1996, all regulatory departments and agencies will be required to use the BIT, or an equivalent analysis, for major regulatory changes.

- Other *Agenda* initiatives involve speeding up access to regulatory information; improving federal/provincial cooperation; increasing the use of plain language (two pilot projects are complete and plain language guidelines have been sent to departments); putting in place a better approach for handling complaints; and building a new regulatory culture (much more training, internet discussion groups/web site, newsletter, etc.). The federal government also continues to explore possible legislation to improve the regulatory system.
- Finally, the government has also initiated an action plan to reduce paper burden on small business. The Regulatory Policy now requires regulators to minimize the regulatory burden on this sector when considering new regulations and changes to regulations. The action plan also deals with specific irritants identified by the private sector. By developing benchmarks for reduced paper burden and by monitoring itself for compliance over the next five years, the government will ensure that it does not re-introduce unnecessary burden.

Next steps

The Treasury Board Secretariat (TBS), in consultation with federal departments and users, has developed "quality assurance" standards for the regulatory process. These standards include principles for departmental complaint resolution mechanisms. This initiative will improve consistency of regulatory practices across departments and provide clear direction on what level of system performance is expected. Ultimately, it should result in high-quality regulations.

Ministers continue to view implementing the Jobs and Growth regulatory reform improvements as a leading economic priority. As this document goes to press, ministers are reviewing proposals for additional reform efforts to

- develop a stronger challenge to regulatory proposals, based on their potential affects on economic growth in Canada and on jobs;
- deal with irritants; and
- make a commitment to a more rational and stable regulatory environment.

Lessons we can share

1992-93 Regulatory Reviews

These reviews, discussed above, were the largest review of regulation ever undertaken at the federal level in Canada. Twenty-six federal departments and agencies looked at their regulations. They learned many lessons:

1. The fact that the reviews were led by three departments, each of which took different approaches, was particularly helpful. The three provided a range of learning experiences which were shared with the other regulating departments.

2. Because departments and their ministers could choose their own paths for reform – following a regulatory review outline provided by the Treasury Board Secretariat – instead of following detailed rules from the centre, they were not forced into a "straitjacket." They could review their regulations using their own expertise, focusing on the problems they knew existed. It was much more than a paper exercise, because departments "owned" it.
3. The review may not have been as complete as the government had originally hoped it would be. As the trade-off for encouraging creativity, independence, and flexibility in departments, the government sometimes had to lower its expectations for results. Also, with time, coping with budget restraint became more relevant – by carrying out the review, departments could position themselves for the inevitable future funding reductions.
4. Departments had difficulty examining what might be called combined regulatory burden – that is, the burden of regulation created by more than one federal department, as well as burden created in combination with provincial and municipal regulators. The sectoral reviews launched in 1994 were one attempt to break out of the "stovepipe" approach to review.
5. It probably would have been useful to have a Treasury Board Secretariat representative on each senior departmental committee to monitor and participate in the review, to share experience from other departments, and to provide best practice advice.

Process

Unlike the broader definition of "regulation" provided for in the "Useful Information" section of this document, the federal regulatory process applies to a narrow definition of "regulation".

The *Statutory Instruments Act* (R.S., 1985, C. S-22) defines "regulations" and dictates the legal process for making them. It defines regulations as legal instruments that

- departments and agencies use to exercise legislative power they have been given under an Act of Parliament (note that "agencies" refers to Crown corporations, boards, and other organizations that make regulations on behalf of the federal government);
- govern judicial or quasi-judicial processes; or
- may significantly "regulate" behaviour – that is, control the way people do things – or significantly affect the economy.

Thus, every federal regulation flows from a particular Act of Parliament. Collectively, regulations are known as "delegated" or "subordinate" legislation because they are laws enacted by a regulatory authority, acting on behalf of Parliament using powers granted by one or more Acts of Parliament.

Procedural requirements: some highlights

The *Statutory Instruments Act* establishes the basic legal process the federal government must follow when developing regulations. The requirements, with certain minor exceptions, are outlined below.

- The Regulations Section, Legislative Services Branch, Justice (formally referred to as PCO-J) must examine all proposed regulations to assess their legality – particularly with respect to the Charter of Rights and Freedoms – as well as to ensure that they adhere to acceptable standards for drafting regulations.
- Regulations must be registered with the Registrar of Statutory Instruments within seven days of being made.
- The government must publish its regulations in the *Canada Gazette*, Part II, within 23 days of registration.
- Regulations become law as soon as they are registered. However, they can be enforced only after they have been published in the *Canada Gazette*, Part II, or after the government has directly notified those whom the regulations will affect.

Responsibility Centre for the Regulatory Policy

In February 1991, the government designated the President of the Treasury Board of Canada the Minister responsible for Regulatory Affairs.

The Regulatory Affairs Directorate of Treasury Board Secretariat (TBS) is responsible for ensuring that departments and agencies follow the government's regulatory policy. The Directorate monitors regulatory proposals from departments and agencies for consistency with the regulatory policy and helps them develop the best possible regulations, or to devise alternatives that meet the same objectives.

Treasury Board Secretariat ensures the efficiency and effectiveness of the government's regulation-making process. TBS is also responsible for developing and updating the federal regulatory policy and its associated regulatory process. This duty includes setting quality management standards for departmental regulatory processes. The Secretariat develops advisory guides and training to help regulatory authorities comply with the policy and achieve the management standards. It will also be monitoring the performance reviews that regulatory authorities conduct to assess whether the management standards have been met, and will report to the President of the Treasury Board on these reviews.

Regulatory authorities are responsible for developing, maintaining, and enforcing regulatory programs that follow the federal regulatory policy, and for developing and implementing regulatory management systems that meet the standards. Authorities will be required to have their performance reviewed and to report to the President of the Treasury Board on whether they have met the management standards.

The regulatory policy also requires the input of Canadians – industry, labour, interest groups, professional organizations, other governments, and individuals – into the design and review of regulations and regulatory programs. Canadians have a responsibility, as citizens, to make a reasonable contribution by helping the government develop regulatory programs that will benefit Canadian society as a whole.

The approval process

The process of making a regulation starts when a department or agency decides that a regulation is the best solution for a problem. Regulations can fall into one of three categories:

- Governor-in-Council (GIC) regulations (most regulations fall into this category);
- ministerial regulations (regulations that a minister is authorized to make under an Act); and
- GIC or ministerial regulations that directly affect the government's spending.

The process described on the following pages applies to typical GIC regulations. As noted above, GIC regulations account for most regulatory activity. The process for ministerial regulations, and for regulations that have to be *approved* (as opposed to merely *reviewed*) by the Treasury Board, varies slightly.

Planning

Through the annual *Federal Regulatory Plan*, departments and agencies identify the regulatory initiatives that they intend to undertake in the coming calendar year and subsequent years. Part of the planning process involves scrutinizing a proposed regulatory initiative to assess whether it is necessary, or if there is some other non-regulatory way to achieve the objective.

Drafting

The department that originates the regulation is responsible for drafting the regulation. The originating department also drafts a Regulatory Impact Analysis Statement (RIAS), which must describe the proposed regulation, the purpose of the proposed regulation, the alternatives considered, a benefit-cost analysis, the results of consultations with interested parties, and the department's responses to concerns raised, as well as details on how non-compliance will be detected and how the regulation will be enforced. Since the fall of 1995, regulatory departments are required to use the Business Impact Test (BIT) or an equivalent tool to assess the impact on industry of proposed/major regulatory actions.

Submission and Review

The deputy minister of the originating department sends the proposed regulation and supporting documentation to the senior general counsel of the Regulations Section, Legislative Services Branch, Justice. He or she also sends a copy to the Regulatory Affairs Directorate of Treasury Board Secretariat and to the Privy Council Office (Order in Council).

Review by the Department of Justice

The Regulations Section, Justice examines proposed regulations to ensure that they have a proper legal basis, particularly with respect to the Charter of Rights and Freedoms. Regulations which have been examined by Justice are blue stamped, and returned to departments for further processing.

Review by Treasury Board Secretariat

The Secretariat reviews all proposals to ensure that the regulation is consistent with the Regulatory Policy:

- the regulator has considered alternatives;
- the benefits of regulation clearly outweigh the costs;
- regulators have adequately consulted the public to allow people to understand the proposed regulation and to participate in the process; and

- the originating department has cooperated with the provinces to help ensure that federal and provincial regulations do not duplicate or overlap each other, so that the regulatory burden on Canadians is kept to a minimum.

Review by the Privy Council Office

The Privy Council Office also reviews proposals to ensure that

- they mesh with government initiatives in the broad sense; and
- the originating department has adequately considered the communications aspects of the proposed regulations;

Ministerial approval for pre-publication

The sponsoring department's minister then approves the regulation and supporting documentation and submits both to the Privy Council Office (Order in Council Section) for consideration by the Cabinet's Special Committee of Council (SCC).

Ministers making decisions on proposed regulations can consult the RIAS and the communications plan. The RIAS describes

- the regulatory proposal and its objectives;
- the regulatory and non-regulatory alternatives that the regulator considered;
- benefits and costs;
- the extent and outcome of consultation; and
- the ways non-compliance will be detected, and how and by whom the regulation will be enforced.

The government is currently considering adding a component to the RIAS that would require departments and regulatory agencies to identify the impact of the proposed regulatory action on both jobs and economic growth more clearly.

Prepublication

The draft regulation and the RIAS are prepublished in the *Canada Gazette*, Part I, usually for 30 days, to inform interested parties and permit further consultation with the public. Exemption from prepublication can be granted if certain criteria have been met, such as extensive consultation.

Ministerial approval for final publication

After prepublication, the sponsoring department's minister submits the final regulation and the RIAS to the Privy Council Office (Orders-in-Council) for final approval by the SCC.

Long delays after prepublication can trigger another round of prepublication.

Registration and publication

The regulation is registered soon after the SCC recommends approval to the Governor General. Usually the regulation becomes effective as soon as it is registered, unless a later date is specified.

The regulation and the RIAS are then published in the *Canada Gazette*, Part II. As noted above, a department cannot enforce a regulation before it has been published unless everyone affected has been notified directly.

Beginning in 1996, a fully consolidated version of the regulations is available through the Internet at <http://canada.justice.gc.ca>. This database is updated twice yearly. The complete Statutes of Canada are also available through the same site.

Parliamentary review

Finally, the Standing Joint Committee for the Scrutiny of Regulations reviews all regulations. It can recommend changes to regulations to the government, report to Parliament on problems with regulations that members of the Committee have discovered, and propose to Parliament that a regulation be overturned.

Variations in the process

The approval process described above applies to Governor-in-Council (GIC) regulations. The two other kinds of regulations have slightly different processes, as explained below.

Ministerial regulations

For certain cases, legislation authorizes ministers of the Crown to prescribe regulations. For ministerial regulations, Governor-in-Council (or SCC) approval is not required. However, the Regulations Section, Justice and the Regulatory Affairs Directorate at TBS must review proposed ministerial regulations.

Regulations that need Treasury Board approval

Ministerial and GIC regulations must normally be submitted first to the Treasury Board for approval if they have direct financial implications. For example, a regulation that would impose a new user fee – or raise, lower, or eliminate an existing one – would directly affect government revenues.

Notification and public consultation

It is often the public that first calls the government's attention to matters that may require regulation. Long before a particular regulation is developed or changed, active discussion often takes place between the public and the originating department. These discussions may be based on past experience with a regulation. For example, they may focus on reasons why the regulation has or has not worked, or how it could be improved or made unnecessary.

Once a department or agency has decided to regulate, the principles of fairness and effectiveness require it to follow a consultative process. The federal consultative process for regulation is summarized below.

- A department usually provides an early indication that it intends to regulate by including a proposal in the annual *Federal Regulatory Plan* published by Treasury Board Secretariat each December.
- Any department can also publish a "Notice of Intent" to regulate, signed by its minister, in the *Canada Gazette*, Part I. Such notices invite participation at the outset, and request data, technical specifications, expert commentary, and other information that would help define issues relating to any proposed regulation.
- Interdepartmental and intergovernmental consultations are encouraged.
- Most departments have their own mechanisms for consulting with the public on proposed regulations. They may use newsletters, consultative committees, informal discussions, and other means. Such consultations are documented and the results included in the formal Regulatory Impact Analysis Statement (RIAS).
- The draft regulations and RIAS go to the SCC for approval to prepublish.
- Draft regulations and the RIAS are prepublished in the *Canada Gazette*, Part I, usually for 30 days. After including the results of any further input as a consequence of prepublication, the originating department resubmits documentation to the SCC for final approval. If the originating department did not include the regulation in the *Federal Regulatory Plan*, 60 days' notice is recommended.
- Usually, most identifiable groups that might be affected by the proposed regulation will have been consulted before the prepublication stage. Nevertheless, prepublication ensures that they have access to a written notice of the government's intentions and to the legal wording of the regulation, and have had a final opportunity to comment. Depending on the type of response and comments, the draft regulation could be substantially changed (or even withdrawn) and the prepublication process repeated.

In any case, the originating department will have modified the RIAS for final publication to reflect the fact that it has been prepublished, to describe any comments received as a result of prepublication, and to provide a response or feedback to those who have commented.

Regulations subordinate to the Canada-U.S. Free Trade Agreement or the *Canadian Environmental Protection Act* must be prepublished for a minimum of 60 days. Technical regulations must be prepublished for a minimum of 75 days, and Canada's trading partners must be notified through the World Trade Organization (WTO) or the General Agreements on Tariff and Trade (GATT) Enquiry Point at the Standards Council of Canada.

Evaluation

Government policy states that departments must evaluate their regulatory programs as they would any others – in other words, these programs are to be evaluated for efficiency and effectiveness. The 1995 Regulatory Policy requires that major regulatory departments review their regulatory process management systems, and that other regulatory authorities review their systems on a schedule based on risk.

Certain events could also trigger an evaluation. For instance, a review of a policy could affect the regulations associated with that policy. The Auditor General could also identify a regulatory program that needs to be improved.

Contact for more information on reform and process:

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Publications:

Guide for Regulatory Authorities on Assessing their Compliance with the Regulatory Policy and Management Standards, Government of Canada, Treasury Board Secretariat.

Regulatory Cooperation between Governments, Government of Canada, Treasury Board Secretariat, November 1994.

Regulatory Policy, Government of Canada, Treasury Board Secretariat, revised 1995.

Regulatory Review Report, 1992-1994, Government of Canada, Treasury Board Secretariat.

BRITISH COLUMBIA

Reform

How we got started

In the fall of 1993, the British Columbia Ministry of Small Business, Tourism and Culture released its *Commitment to Small Business Discussion Paper*. More than 1000 small business operators, business associations and individuals responded, noting that they felt that there were too many regulations, that too much time was required to deal with them and that it was difficult to get information about them.

Our aim

The British Columbia Government wants to respond to comments made during the consultation following the *Discussion Paper*.

Where we are now

The Ministry of Small Business, Tourism and Culture has taken steps to make it easier and less time consuming for business to comply with **existing** regulations.

- The Canada/British Columbia Business Service Centre has set up a World Wide Web site on the Internet to help business people get information about government regulations.
(<http://www.sb.gov.bc.ca>)
- The Ministry of Small Business, Tourism and Culture's *Small Business Start-Up Kit* is currently available from Business Info Centres and government agent offices across the province. This kit includes many federal and provincial documents and forms required by new businesses.

Next steps

The Government of British Columbia will continue to work to make it easier and less time consuming for business to comply with **existing** regulations. Some ongoing improvement will include registration of businesses, reporting requirements and payments to government. Specific steps include the following initiatives.

- The Ministry of Small Business, Tourism and Culture, along with the Canada/British Columbia Business Service Centre and Western Economic Diversification Canada, is currently working on an on-line, much-expanded version of the *Small Business Start-Up Kit*. This One-Stop Business Registration (OSBR) will be available across the province through self-service personal computer workstations. The OSBR system will allow new businesses to register at one location for several federal and provincial agencies. Six pilot sites will be located throughout the province by May 1996. The system will simplify the registration

process and reduce the time needed to register. The goal is to make registering with all government agencies as simple and seamless as possible.

- An interministry committee will be established to consult with stakeholders to identify opportunities for simplifying regulatory compliance processes and associated paperwork.
- The government will consider reviewing regulations in key ministries to identify opportunities for regulatory change, developing a strategy for change and implementing specific changes.

With regard to **new** regulations, the Ministry of Business, Tourism and Culture will work with other ministries to establish a process for comparing the impact of new regulations on business, consumers and other stakeholders with the policy objective. Through this process, ministries would review all proposed new regulations and advise Cabinet of their cost-benefit implications.

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Publications: *Commitment to Small Business Discussion Paper*

Process

The approval process

Regulations are legal devices that allow the Province to enforce the legislation and government policy to which they apply.

The *Regulations Act* of 1983 describes the process by which any regulation becomes legal. The process begins when the originating ministry decides to make a regulation when authorized to do so by a particular Act that is administered by that ministry. The *Regulations Act* also provides for the office of the Registrar of Regulations, where regulations are deposited.

Planning

The government has no formal planning process for developing regulations. However, such events as Throne and Budget speeches and the introduction of legislation may signal the need for regulation.

Drafting

Each originating ministry is responsible for giving instructions to Legislative Counsel for drafting regulations, with the help of ministry lawyers. Legislative Counsel has sole responsibility for drafting regulations; orders in council may be drafted by the originating ministry or by Legislative Counsel.

Submission

When drafting has been completed the draft regulation is then submitted to the Legislative Counsel, who designates the proposed regulation as either "minor" or "significant."

Minor regulations are generally routine and have few, if any, policy implications. A significant regulation could have implications for policy or could significantly affect particular groups within the Province. Accordingly, a significant regulation warrants fuller discussion and consideration. Legislative Counsel will discuss significant regulations with the Director of Cabinet Operations who will schedule it for review by a committee called the Working Group on Legislation and Regulations.

Internal approval

Minor regulations require only that the originating ministry complete an order-in-council information sheet and a distribution sheet, which are then passed on to the responsible minister. No briefing note is required.

Significant regulations are subject to a different process, as outlined below. Note, however, that these procedures are internal to the ministries and may vary.

- The originating ministry must arrange for Treasury Board staff to complete a financial impact assessment. This assessment details how the regulation will affect the provincial treasury in terms of revenues, staffing and financial risks. It also indicates the source of the funds to administer and enforce the regulation.
- The originating ministry prepares a briefing note or information sheet. This note contains a background section, which explains why the proposed regulation is needed, the options considered, time constraints and other issues. It also includes an impact statement, which contains information on the proposed regulation's effect on industry, the anticipated public reaction to the regulation and consultations with other ministries. A briefing note should also outline how the government should introduce and enforce the regulation.

Ministerial approval

The minister is responsible for submitting both minor and significant regulations for approval by Cabinet Operations. For a **minor regulation**, the minister reviews the order in council and the regulation within the appropriate Cabinet committee. The minister submits **significant regulations**, along with their attachments, to the Secretary to the Director of Cabinet Operations.

Executive Council approval

Minor regulations go from committee approval through Cabinet to the Lieutenant Governor for signature.

A **significant regulation** goes with recommendations from the appropriate Cabinet committee as well as the review results of the Working Group on Legislation and Regulations to Cabinet for approval.

The originating minister, Premier and Lieutenant Governor sign the approved regulation.

Registration and publication

The regulation is then deposited with the Registrar of Regulations. It is effective as soon as it has been deposited, unless otherwise specified in the regulation. The Registrar is responsible for publishing the new regulation in the *British Columbia Gazette*. However, the Registrar may decide not to publish a regulation if it would be too costly to do so, and if the regulation will be made directly available to persons who are likely to be affected. The Registrar must, however, indicate in the *Gazette* the location where the public may inspect the exempted regulation. Once a regulation has been deposited with the Registrar, it is available for public viewing during business hours.

Notification and public consultation

The originating ministry must consult with other ministries if it decides that a particular regulation will affect other mandates. At his or her discretion, the originating minister may also involve the public in the consultative process. Usually, active discussion does take place between the public and the ministry about the need to develop regulations in a given situation.

Evaluation

There is no specific requirement to evaluate regulations, although program evaluations will sometimes extend to the level of regulation.

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ALBERTA

Reform

How we got started

As part of Alberta's new economic development strategy, *Seizing Opportunity* (April 1993), Premier Klein announced a two-stage review of all government legislation, regulations, policies and procedures.

The basic objectives for this initiative were:

- to reduce the regulatory burden on business;
- to create jobs for Albertans by improving the business and investment climate; and
- to reduce government costs and accelerate decision making.

Our aim

The policy objective for the regulatory reform efforts is to retain only those regulations "necessary" to ensure protection of the public interest. There are no specific targets. The onus is on the departmental minister to support the need for retaining any regulation, by showing that the regulation meets one or more of these criteria:

- is necessary to maintain or enhance public health, education, order or safety;
- is necessary to maintain or enhance the environment;
- contributes significantly to the goals of sustainable development;
- contributes significantly and positively to the competitiveness of the private sector in the province, through such means as promoting innovation and encouraging efficiency in the conduct of business;
- is necessary for effective internal administration of the government of the province.

In addition, those regulations retained will be made clear and concise, with simplified procedures and requirements; will minimize administrative costs to government and compliance costs to clients; and will include a sunset clause.

Where we've been

In Phase I of the review, which lasted from May 1993 to the fall of 1993, all departments were asked to prepare draft action plans to identify legislation, regulations and policies that could be streamlined or eliminated.

As part of the Phase I consultations, Alberta Economic Development and Tourism invited input from companies and business organizations on ways to improve the province's regulatory environment. Individual departments also consulted their specific stakeholders and clients when developing their draft action plans on regulatory reform.

A Caucus Task Force on Deregulation, comprised of MLAs, was in place from April 1994 to November 1994. It released *Back to Basics*, a summary of regulatory reform plans across government.

On May 10, 1995, Premier Klein announced the Regulatory Reform Task Force, an industry-government committee of five core members, chaired by MLA Gary Friedel.

For each departmental review, two additional members with expertise or experience with that department are added to the Task Force. More than 30 members from business, education, municipal and environmental associations will participate directly in the regulatory review activities undertaken by the Task Force.

The Task Force has developed a workplan instructing departments to schedule all existing regulations for "sunset" in 1996, 1997 or 1998. The sunset will trigger a thorough review to determine whether or not the regulation needs to be rescinded, improved or retained as is. Only those regulations that are essential to the public interest, declaratory in nature or subject to federal-provincial arrangements will be exempted.

In addition, the Regulation Impact Report (RIR), required by order in council, will ensure that all new and amended regulations meet reform standards. The RIR includes a number of questions relating to:

- the cost to government of implementing the regulation;
- the compliance cost to the private sector;
- consideration of alternative methods of achieving the objective of the regulation;
- consultation with those affected by the proposed regulation; and
- overlap and duplication.

Where we are now

All provincial government ministries have completed their regulatory workplans. The regulatory workplans will be appended to the respective departmental three-year business plan, which are released in February. The Workplans will tell stakeholders when regulations affecting them are slated for review in the review process, encouraging them to participate in the review process.

All departments met with the Task Force in the preparation of their individual workplans. Meanwhile, a number of RIRs for new regulations have been completed and submitted to the

Task Force chairman for approval. Alberta Economic Development and Tourism continues to play a secretariat role to the Task Force, along with Alberta Justice.

Next steps

All government ministries have begun their three-year review. In addition, for any amended or new regulations, a Regulation Impact Report will be submitted to the Chair of the Regulatory Reform Task Force.

The Task Force expects to be active in the next three years, facilitating the completion of the regulatory reform process.

Lessons we can share

The Task Force has learned that the job of reviewing each and every government regulation is too onerous for a single committee to undertake, from both a human resource perspective and an expertise viewpoint. It is more valuable to implement a process or mechanism that will ensure ongoing, timely reviews of regulations, and to set criteria for new and amended regulations that will follow the principles of regulatory reform.

Overlap and duplication is a significant problem, worthy of further investigation.

Business would like single-window access to government. Often, it is multiple levels of government, government regulation and government approval processes that cause lengthy and costly delays.

Deregulation is not the goal. Business expects regulation – but it also wants clarity, lack of duplication and clear processes for approval. Regulatory certainty creates a good climate for making business decisions and financial arrangements.

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Publications:

Alberta Government Deregulation: *Back to Basics, Alberta Government Caucus Task Force on Deregulation*, November 1994.

Alberta Regulatory Reform: *Improving The Alberta Advantage*, Workplan, September 1995.

Process

The approval process

In Alberta, regulations are considered delegated or subordinate legislation. They gain their legal status from Acts of the Legislature. The Regulations Act defines "regulations" and describes the process for filing them with the Registrar of Regulations to give them legal status. The Registrar function is part of the Legislative Counsel Office. The Act provides for other Acts to be exempted from its provisions.

The process begins when the originator of a regulation, duly authorized under an Act, decides that a regulation is needed in a particular situation.

The following procedure applies to the making of regulations by order in council. However, it should be noted that a substantial number of regulations in Alberta are made at the ministerial level without order in council.

Planning

Other than planning steps introduced under the current regulatory reform efforts, no formal planning process exists, and a department that plans to develop a regulation is not required to notify the public that it intends to do so. However, some advance warning is given for regulations associated with new legislation. Throne or budgetary speeches also signal that the government intends to regulate. Similarly, active discussion and a minister's public commitment to regulate provide advance notice of impending regulation.

Drafting

Whoever originates the regulation is responsible for drafting instructions to be given to the Legislative Counsel Office. The Office decides whether the originator has the authority to make a regulation. The Legislative Counsel Office then drafts the regulation. When the Legislative Counsel Office has completed the draft, the originator prepares a Recommendation for Order in Council to accompany the regulation.

Submission and ministerial approval

The minister of the originating department must sign the Recommendation for Order in Council, which is then submitted to the Executive Council Office of Cabinet. The Recommendation also goes to the Treasury Department, which must approve it and sign it off.

Executive Council approval

When it receives the Recommendation, the Cabinet's Executive Council Office forwards it to the appropriate standing policy committee. A briefing note attached to the Recommendation covers the following points:

- the actual regulation and under what legislative authority it is proposed;

- the current situation and why a regulation is needed; and
- background and any policy issues.

The minister has the discretion to determine what background and policy issues are important, the extent to which the public will be consulted, the economic implication of the regulation and expected results. As a result of regulatory reform efforts, each regulatory action must be accompanied by a Regulatory Impact Report, which the Chairperson or a designate of the Chairperson of the Regulatory Reform Task Force must approve. This report must be approved prior to filing with the Registrar of Regulations.

The standing policy committees always assess the regulation from a policy perspective. If approved, the Recommendation for Order in Council goes back to Cabinet for approval.

Legislative approval

Although there is a select standing committee on Laws and Regulations, there is no general requirement for regulations to be reviewed or approved by that committee.

Filing and publication

When Cabinet has approved the regulation, the Lieutenant-Governor signs the order in council, which establishes the regulation's legality. The regulation then goes back through Executive Council to the Legislative Counsel Office. There, it is filed with the Registrar of Regulations. The Registrar must then publish the regulation in the Alberta Gazette within one month unless the order in council specifies otherwise.

Notification and public consultation

With the exception of consultation requirements under the current regulatory reform initiative, consultation is not mandatory. Whoever originates a regulation determines the extent of the consultative process. However, in Alberta, extensive consultation usually does occur. The originating department can use existing consultative mechanisms – such as various public committees, departmental consultation activities and publications – or can establish new ones specifically for the proposed regulation.

No policy covers the process of making a regulation public. The originator has only to publish the regulation in the Alberta Gazette. Because public notification is not mandatory, only those with an interest in a particular regulation are usually notified.

Evaluation

In addition to mechanisms introduced by the Regulatory Reform Task Force, described earlier in the text, the Regulation Act provides authority for revising either all regulations or individual regulations. Also, the Regulation Act stipulates that the Lieutenant-Governor in Council may repeal any regulation that is obsolete, expired or otherwise ineffective.

This repeal process is used when particular regulations have not been used or are no longer legal because an Act has changed, or when the courts have ruled that a regulation is invalid.

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SASKATCHEWAN

Reform

How we got started

Saskatchewan has been involved in a regulatory review process since the early 1980s. In 1982, it initiated a major legislative and regulatory review, and revised or deleted 1200 pieces of regulation and legislation.

In 1988, the Business Regulatory Review Council was established. Its members come from various industry associations. This council assessed existing regulations and also developed the *Guidelines to Business Regulatory Fairness* modelled after the federal government's *Citizens' Code of Regulatory Fairness*.

In November 1992, the province's economic strategy, entitled *The Partnership for Renewal*, committed the government "to develop and implement a new regulatory system that will include a *Code of Regulatory Conduct* with procedures and criteria for developing or changing policies, regulations or legislation that have an impact on the economy."

In February 1993, Cabinet approved the formal adoption of the *Code of Regulatory Conduct* as a guideline for provincial government departments and agencies when they are drafting legislation and regulations. The Cabinet directive further indicated that individual departments and agencies would be responsible for applying the principles of the Code. The Legislation Review and Regulatory Review committees would monitor compliance.

Our aim

The *Code of Regulatory Conduct* articulates Saskatchewan's regulations policy. Central to this policy is the principle that the people of Saskatchewan should be subject to regulation only when there is a clearly identified need for it. Whoever originates a regulation must explore non-regulatory alternatives and, where possible, quantify the potential cost of the proposed regulation to business and individuals.

Saskatchewan's regulatory policy provides for a process based on these principles:

- the public will have advance information and notice of proposed regulations;
- affected sectors will be able to provide input;
- regulations will be reviewed for their continued relevance;
- regulatory conflicts, both those between governments and those within the government, will be minimized;
- professionals will draft regulations according to uniform standards;

- the government will base its regulatory decisions on clearly articulated policy objectives and criteria;
- all regulatory and legal requirements will be clearly communicated to the public; and
- elected lawmakers will review proposed legislation and regulations in detail and ensure that they adhere to the above principles.

The Code is relatively straightforward. It has five subheadings, which relate to the objective of the regulation, the responsibility of the originator (the regulatory or legislative authority), the characteristics of the regulatory process, the characteristics of the decision-making process and a communications requirement.

Where we've been

The *Code of Regulatory Conduct* has been strenuously applied to all proposed regulations since March 1993. All new legislation introduced since the January 1994 legislative session also complied with the principles of the Code.

The Government of Saskatchewan is continuing to focus on regulatory reform. In fact, in March 1995, Cabinet repealed 135 pre-1981 regulations and 46 orders in council that had been filed as regulations.

Next steps

The government has pledged to reduce overall regulation by at least 25 per cent over the 10-year period, commencing in 1995 and, by the end of that period, to ensure that all regulations stipulate that they must be reviewed and reaffirmed within 10 years of coming into existence.

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Publications:

Saskatchewan Department of Economic Development; *Bulletin on Code of Regulatory Conduct*.
Saskatchewan Department of Economic Development; *Partnership for Renewal*

Process

The approval process

In Saskatchewan, regulations provide the framework for applying particular provisions of the Acts to which they relate. Regulations may be described as "delegated" or "subordinate" legislation. Regulations are termed delegated when the Legislative Assembly delegates authority for making them to some other body, such as Cabinet, ministers, agencies or Crown corporations.

Regulations are considered subordinate legislation because, according to the *Regulations Act*, 1989, the Acts to which they apply must specifically permit regulations to be developed. However, the Legislature can override this requirement. The *Regulations Act* also lists those Acts under which regulations can be made.

Planning

A minister, a Crown corporation or some other body identifies a situation that requires some form of regulation.

Note that, as mentioned earlier, the *Regulatory Code of Conduct* requires anyone originating a regulation to consider alternatives.

Drafting

The originating department prepares drafting instructions, usually with its legal counsel and sometimes with the Department of Justice. Then the Legislative Drafting Section of the Department of Justice prepares the preliminary draft of the regulation for the originator's approval.

The originator circulates the instructions and draft regulation among other government departments. Justice prepares a final draft, incorporating any changes arising from these consultations, certifies its legality and forwards it to the originator.

Submission

The proposed regulation then goes to Treasury Board and comptrollers in the Department of Finance, who review it for its budgetary, financial and other implications. If a regulation pertains to a Crown corporation, the Crown Management Board also reviews it.

Internal governmental consultation occurs as necessary.

The reviewing agencies send their comments to the originator, with copies to the Secretary of the Regulations Review Committee.

A caucus committee may also review a regulation and recommend adopting, amending or rejecting it.

The Secretary of the Regulations Review Committee also receives regulations. At this point, the Committee can recommend that a regulation go to Cabinet for review.

Internal approval

The Regulations Review Committee receives copies of all internal comments and notes on discussions with the originator. The originating department must be satisfied that it has covered all issues and has responded to comments from the reviewers. The originator must also meet all the requirements of the Committee (see below).

Ministerial approval

The minister signs the proposed regulation when he or she is satisfied that it is needed to carry out government policy. The minister then forwards it to the Secretary of the Regulations Review Committee.

The Secretary of this committee is responsible for ensuring that a regulation meets all regulatory requirements before placing it on the Committee's agenda.

Requirements of the Regulations Review Committee

When the Committee scrutinizes a regulation, it does so from various perspectives, as outlined below:

- it determines whether the regulation is necessary and whether other non-regulatory options are feasible;
- it compares the proposed regulation with existing legislation, regulations and government policies;
- it examines the regulation to determine whether less cumbersome regulatory alternatives are possible;
- it determines whether public and internal input during the preparation of the proposed regulation has been adequate. In particular, it determines whether the government has consulted those who will carry out or be affected by the regulation and has addressed their concerns;
- it assesses the extent to which business, and others affected by the regulation including the general public have accepted a regulation; and
- it reviews all regulations that generate revenue to determine if fees are reasonable, yet high enough to recover costs. It also assesses regulations to see if they are easy to administer.

In reviewing a regulation, the Committee can call on resource people and can extend the discussion beyond the regulation itself.

Executive Council approval

The Regulations Review Committee advises Cabinet whether proposed regulations are necessary, and whether these proposals are ready to proceed or whether they should be changed. If change is needed, the Committee recommends the changes and indicates whether to further consult those who will be directly affected and the general public.

Cabinet then decides whether to approve the regulation. The decision is recorded in the Cabinet minutes and communicated through the records of decision.

Registration and publication

The Registrar of Regulations ensures that an approved regulation is filed both as a regulation and as an order in council. Within 30 days of filing, the regulation must be published.

Legislative review

The Assembly Committee responsible for reviewing regulations satisfies itself that the originator has the authority to make a given regulation. This committee has the power to recommend that the Assembly reject all or part of a regulation. It can also advise the Assembly to ask for amendments to all or part of a regulation.

Notification and public consultation

The Throne Speech, the Budget or notice of legislation can alert the public that the government may introduce a regulation. As at the federal level, the need to regulate may have become apparent through consultations between the government and the public.

The *Regulatory Code of Conduct* states that business and citizens must have adequate access to, understanding of and input into the regulatory process. Various steps in the regulation approval process help the government meet this requirement:

- as noted earlier, the originator of a proposed regulation must assess whether or not a regulation is necessary and if other mechanisms might be equally valid. This step can involve extensive consultation with interested parties;
- the originator must consult with interested parties when preparing the instructions for drafting the regulation;
- interdepartmental and intergovernmental consultations are mandatory and are reported as background to the Regulations Review Committee;
- once a regulation has been filed with the Registrar of Regulations, it comes into force unless otherwise specified. Once filed, it becomes a public document. Anyone may come to the Registrar's office during business hours to inspect the regulation;

- the Registrar of Regulations must publish all regulations in *The Saskatchewan Gazette* within 30 days after they have been registered, unless otherwise specified.

Evaluation

The *Regulatory Code of Conduct* states that regulations must be reviewed to determine if they remain relevant. Evaluating a regulation remains the responsibility of the minister who originated it. However, anyone can identify problems or concerns that could prompt a review.

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Publications: Saskatchewan, Executive Council Office; *Fact Sheet for Regulations*

MANITOBA

Reform

How we got started

In the late 1970s, regulatory reform was high on the national agenda. The Premier of Manitoba was the lead first minister on the issue at a series of first ministers' meetings. As a result of its commitment to regulatory reform, Manitoba was one of the first provincial governments to require the filing of a regulatory impact statement with every proposal destined for Cabinet. In addition, Manitoba put in place an administrative review of the impact statement to ensure the adequacy of the information before its submission to Cabinet.

In the course of complying with a Supreme Court order regarding Manitoba's constitutional language obligations, departments reviewed all of the regulations under Manitoba statutes (some 6,500 pages) to determine whether they were necessary. Nearly 1,000 pages of obsolete regulations were repealed outright, or repealed and replaced by up-to-date regulations. The balance were updated and rewritten to the extent that time permitted.

Over the past few years, the Manitoba government has undertaken major efforts to reduce the burden of regulation through policy. For example, it has established a more competitive small business tax regime, including raising the payroll tax threshold, urging greater federal-provincial tax coordination and the elimination of duplication and overlap in a wide variety of fields, and leading the provinces in advocating the reduction of internal trade barriers.

In the spring of 1993, the Manitoba government published its *Framework for Economic Growth* which outlined its long-term economic policy directions for creating a better climate for business and investment. Through the Framework, the government pledged to review and streamline government regulations and approval processes to reduce administrative costs to businesses, individuals and the government.

As the result of this commitment, the government-private sector *Advisory Panel on Business Regulations* was struck in March of 1994 with the objective of reducing red tape and paper burden for Manitoba's small businesses.

Our aim

A combination of legal and policy requirements oblige government departments to demonstrate that a regulation is necessary; to consult the public, interested parties and other government agencies; and to identify the impact on affected persons.

Where we've been

The mandate of the Advisory Panel on Business Regulations was to review the existing situation and to make recommendations. These recommendations could not compromise the achievement of legitimate regulatory objectives. They also had to recognize the need for government to

consult with and to be fair to small business when enacting regulation and setting up compliance mechanisms. The Panel which reported to the Minister of Industry, Trade and Tourism in July 1994, examined such issues as:

- reducing the red tape and paperwork burden for business, individuals and government;
- making business regulations clearer;
- improving consultation with business before the final enactment of business regulations; and
- developing standard guidelines for use by government departments when developing business regulations.

On November 15, 1994, the Government of Manitoba responded to the Advisory Panel's report. It announced that:

- all new regulations will have a mandatory sunset date of five to seven years, or a mandatory review date;
- departments must consider alternatives to regulations, prove that regulations are the best solution to a situation and consult with affected stakeholders before changing regulations; and
- managers will use a checklist when developing government forms to ensure that the forms are written in plain language and to reduce duplication and unnecessary steps.

The government also announced the creation of the Regulatory Review Committee (RRC), co-chaired by the Minister of Industry, Tourism and Trade and a member of the Government Caucus. The RRC started its work in February 1995. In most situations, the RRC and the senior analyst with Federal/Provincial Relations is the final review and check before a regulation proceeds to Cabinet.

Where we are now

On August 23, 1995, the Minister of Government Services – new Chair of the RRC – announced that a "notice and comment" provision would be added to the regulatory process. Departments proposing new regulations or major amendments to regulations must make a draft copy of the regulatory proposal available to the general public before proceeding to Cabinet.

As well, the Minister announced the beginning of a "zero-based" review of regulations. This review is designed to eliminate regulations or sections of regulations that no longer have a legitimate purpose. It will also streamline necessary regulations and reduce paperwork associated with them, in a manner that does not prevent the government from achieving legitimate objectives.

Next steps

The zero-based review is scheduled to be completed by April 1996. Action plans developed through this system will be reviewed annually. This review involves 591 base regulations, which make up 71 per cent of the total regulatory scheme of the province.

Process

The approval process

In Manitoba, most regulations are governed by *The Regulations Act*, which defines a regulation generally as a power conferred by a statute to make a regulation, rule, order or by-law of a legislative nature, or to make rules of practice or procedure. A person or group of persons specified in the statute is permitted to exercise the power. Under *The Regulations Act*, regulations must be registered by the Registrar of Regulations and published in the *Manitoba Gazette* to be valid. The Registrar of Regulations function is part of the Office of the Legislative Counsel. The Office provides drafting services and legal advice respecting all regulations. Most regulations must be enacted in both English and French.

Once it is decided that regulation is necessary, a number of procedures are followed depending on whether the regulation-making authority is the Lieutenant-Governor in Council, a minister, a board or commission, or an individual, and whether any approval is necessary.

The following procedure applies when the Lieutenant-Governor in Council makes regulations.

Planning

When planning a regulation, departments should satisfy themselves that regulation is really required and that it has explored all options. A regulation-making authority typically gives notice of a proposed regulation and asks the people whom it affects to comment on it. Once the department has determined that the regulation is still required, it will submit a detailed memo outlining the proposal to the Secretary of the Regulatory Review Committee.

Drafting

Once the Regulatory Review Committee has approved the regulatory proposal, the proposal proceeds to the Office of the Legislative Counsel for drafting. French versions are prepared by legal translators, who are also located in the Office of the Legislative Counsel.

Submission

A regulation impact statement, outlining the consultations that have taken place, the impact of the regulation on government and affected persons, and the financial implications of the regulation, is prepared for every regulation. Once the final draft of the regulation has been completed, it is resubmitted to the Regulatory Review Committee for clause-by-clause consideration.

If the regulatory action consists of a new regulation or major amendment to a regulation, the department will place a notice in Part I of the *Manitoba Gazette* and all appropriate local newspaper publications for two consecutive Saturdays. This notice will include the department's name; an explanation, which is not to exceed two paragraphs, of the regulation; the location where the regulation can be reviewed; and the name of a contact person. The Secretary of the Regulatory Review Committee and the departmental contact person review any questions and concerns, and the Secretary reports the findings to the Regulatory Review Committee. If major

concerns have been raised, the regulatory proposal goes back to the Regulatory Review Committee. If not, the proposal proceeds to the Senior Analyst within the Department of Finance.

After the Senior Analyst has reviewed the material and the regulatory proposal, as well as the accompanying memo, all this information is forwarded to the Clerk of the Executive Council.

Executive Council approval

The Executive Council Office arranges to have a regulation considered by Cabinet. Cabinet then considers the regulation. If it approves the regulation, the minister of the originating department, the Premier and the Lieutenant-Governor sign the order in council.

Registration and publication

The Clerk of the Executive Council certifies the regulation. It is then sent to the Office of the Legislative Counsel to be registered, and then to the Queen's Printer for publication in Part II of the *Manitoba Gazette*. Occasionally, the Lieutenant-Governor dispenses with publication of a regulation, publishing instead only a notice of the regulation.

Notification and public consultation

Departments determine the nature and extent of consultation. A summary of the consultative activities is required as part of the Regulatory Impact Statement. In cases of a new regulation or a major amendment to a regulation, the department is not only required to place a notice in Part I of the *Manitoba Gazette*, but is also required to place a notice in all appropriate local newspaper publications for two consecutive Saturdays.

Evaluation

There is no legal requirement to evaluate regulations after they have been enacted. However, most departments have developed administrative processes through which they periodically review regulations. Review is also precipitated by ongoing consultations with persons affected by the regulation.

All new regulations must have a mandatory sunset date unless it can be established that the purpose of the regulation will not be realized within such a date, or that such a termination date is not in the public interest. Where sunset dates are not incorporated into the regulations, regulations must specify mandatory review dates and review procedures.

Contact for more information on process and/or reform:

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Publications: *Report of the Advisory Panel on Business Regulations*, July 1994

ONTARIO

Reform

How we got started

Until recently, Ontario has focused on reforming regulatory agencies as part of its on-going administrative functions, rather than on reviewing the regulations themselves.

Where we've been

The Standing Committee on Regulations and Private Bills reviewed a proposed regulation policy in 1988. However, no formal policy is in place at present.

Subsequent to the Macaulay Report: *Review of Ontario's Regulatory Agencies*, Management Board conducted a review of 85 regulatory agencies and made recommendations for restructuring and improving the efficiency of these agencies. The November '95 Fiscal and Economic Statement announced a further review of all agencies, boards, and commissions, with a fiscal reduction target of \$220 million.

Through its "Clearing the Path for Business Success" initiative, the province has developed technology-based approaches to streamline and simplify the relationship between business and government. These approaches may influence the government's choice of future forms of regulation, and affect the pace of change from more traditional forms of regulation to available alternatives. They also allow government to forge partnerships with a wide range of industries. Examples of such process solutions include

- single-window approaches;
- technology-assisted registration and filing; and
- self-management

Where we are now

In June 1995, the current government was elected on the platform outlined in its Common Sense Revolution (CSR). A key component of the CSR is "cut[ting] barriers to job creation, investment and economic growth."

Consistent with CSR objectives, the Government of Ontario announced the Red Tape Review Commission in its Fiscal and Economic Statement on November 29, 1995. The Commission, which the Premier has appointed, will review the appropriateness of existing provincial regulatory measures, especially as they affect business and institutions, and make recommendations to Cabinet on:

- the elimination or amendment of any inappropriate regulatory measures; and
- the design and implementation of a permanent evaluation/impact test and review process for approving any new regulatory measures.

A regulatory measure includes all statutes and subordinate legislation and all associated administrative policy and operational processes, directives and actions. These may include regulations, licensing, inspection, standards, compliance, enforcement, registration, permits, approvals, certifications or other similar procedures and processes.

The Commission, which is composed of government caucus members, reports directly to Cabinet and has a one-year mandate, which began January 1, 1996.

Contact for more information on reform:

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Red Tape Review Secretariat
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Internet: no address available

Publications: Macaulay Report: *Review of Ontario's Regulatory Agencies*, 1993.

Business Development Policy Branch. Ministry of Economic Development, Trade and Tourism.
Eliminating Red Tape: Recent Initiatives in North American Jurisdiction. January 1996

Process

The approval process

Regulations are made or approved under an Act of the Legislature by a variety of authorities, including the Lieutenant-Governor in Council, a minister of the Crown, an official of the government, or a board or commission whose members have been appointed by the Lieutenant-Governor in Council.

The *Regulations Act* defines a regulation, and outlines the process through which a regulation becomes legal. According to the Act, by-laws made under legislation such as the *Municipal Affairs Act* and the *Broker-Dealers Act, 1947* are not considered regulations.

The process starts when the originator, such as a minister of a department whom the Legislature has authorized to develop regulations, decides that regulation or a change to an existing regulation is needed. He or she follows a process defined by the *Regulations Act*, as outlined below.

Planning

Except for the few Acts containing a formal notice requirement, Ontario has no formal planning process that requires regulators to give notice to those affected or to the general public before making a regulation. However, it is the practice of many ministries to undertake policy consultations prior to the introduction of new regulatory measures or significant changes to existing measures. Under the Environmental Bill of Rights (EBR), 12 ministries are required to give 30 days public notice of proposed Acts and policies (or changes) that could significantly impact the environment. EBR notices must also be given for proposed regulations under designated Acts.

Sometimes a Crown or Budget speech, or the introduction of an Act, is a signal that the government intends to regulate. Typically, Cabinet will review and approve the policy in substantive new regulations, or regulations proposing significant changes to existing regulations, before any regulation implementing these changes is drafted. However, most regulations are initiated as part of the day-to-day business of government.

Drafting

The originator prepares drafting instructions. The Registrar of Regulations, or his or her staff, prepare draft regulations with the help of legal staff in the sponsoring ministry and any specific policy direction from Cabinet.

Submission and ministerial approval

If a regulation requires Lieutenant-Governor in Council (Cabinet) approval, the sponsoring minister signs a covering order in council recommending approval. If the regulation affects spending, revenue or staffing, the Management Board must review it first. The regulation can then proceed to the Cabinet Committee on Legislation and Regulations, along with the

appropriate background documentation. Among other things, this documentation outlines the purpose, background and effective date of the regulation, its anticipated economic impact on government and the public, any alternatives to regulation that might have been considered, and the strategy for publicizing the regulation.

Executive Council approval

Lieutenant-Governor in Council regulations typically proceed to Cabinet by way of the Cabinet Committee on Legislation and Regulations. This committee attempts to ensure that the regulations are authorized by statute, correct from a technical drafting point of view, and consistent with general government policy and any specific policy direction. As with any other Cabinet committee, the Committee has a full range of options, which include recommending approval of the regulation to Cabinet, referring the regulation back to the ministry for further work, or recommending against approval.

If Cabinet approves the regulation, the Chair of Cabinet will sign the covering order in council. Cabinet Office will then date and number the order, the Lieutenant-Governor will sign it and certified copies will be prepared.

Registration and publication

It is the responsibility of the sponsoring ministry to file certified copies of approved regulations with the Office of the Registrar of Regulations, whose responsibility under the *Regulations Act* includes publishing regulations in the *Ontario Gazette* as a form of public notice. A regulation is not effective until it is filed with the Registrar of Regulations and is only enforceable against a person if he or she can be assumed to have had notice of it.

Legislative approval

The Legislature has no direct input into developing regulations. However, from time to time the Standing Committee on Regulations and Private Bills reports its observations, opinions and recommendations to the House, as required by subsection 12(3) of the *Regulations Act*. Often, the Committee reports on particular regulations.

Notification and public consultation

In Ontario, there is no general requirement for public notice or consultation on proposed regulations, be they new regulations or amendments to existing regulations, unless the Act under which a regulation is to be authorized specifically provides for it or is designated under the Environmental Bill of Rights. However, as noted above, ministries may consult with stakeholders or circulate draft regulations. The government must notify the public of new regulations by publishing them in the *Ontario Gazette*.

Evaluation

There is no general requirement, at this time, to evaluate regulations periodically or against particular criteria. However, the Red Tape Review Commission is expected to recommend a process for the evaluation of proposed and existing regulatory measures.

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QUEBEC

Reform

How we got started

Government initiatives on regulation have taken place in three stages over the last 15 years. In 1981, a grid for economic evaluation of regulation was developed and applied by the Economic Development Secretariat of the Executive Council. This grid was designed to evaluate in cost-benefit terms regulations that impose costs on, or grant privileges, to businesses.

In 1986, the *Regulations Act* was adopted. This Act requires that regulations be published in draft form in the *Gazette officielle du Québec* for consultation before they are submitted for adoption by the Cabinet.

In 1994, a Task Force on Deregulation was established, reporting directly to the Premier. This Task Force, made up of MNAs and representatives of the business community, proposed to the government the policy governing regulatory activity. The secretariat of the Task Force was assigned to the Secretariat on Deregulation, which was created at the same time within the General Secretariat of the Executive Council.

In all these initiatives, the government's underlying concern was to take into account the impact of regulations on businesses.

Our aim

Quebec's policy governing regulatory activity was adopted by the Cabinet on June 14, 1994 and is based on the following principles:

1. Regulation is a major means of intervention available to the government to resolve certain problems or achieve certain objectives.
2. The advantages of regulation must outweigh the disadvantages or costs, both for the government and for the clienteles concerned.
3. Regulations must be drawn up with the continued competitiveness of Quebec businesses in mind.
4. Public consultations must be an integral part of the regulatory process.
5. Existing regulations must be subject to periodic evaluation.

The policy adopted by the government has no quantitative targets. The approach is to analyse draft legislation and regulations submitted to the Cabinet from the standpoint of their compliance with the requirements of the regulatory policy and to ensure that existing regulations are reviewed.

Where we've been

In recent years, there has been a growth in regulatory activity: in 1993, 634 regulations were adopted, compared to 540 in 1991 and 402 in 1987, for a 60% increase in six years. The policy on regulatory activity will be largely accountable for the decline observed in 1995, when only 241 regulations were adopted.

The mere knowledge that the government intends to apply the regulatory policy has been enough to prevent proposals from being forwarded to the Executive Council. In addition, the Secretariat's analyses have led the Cabinet to request amendments to proposals or to reject them.

If there is a lesson to be learned from Quebec's experience, as from the other experiences we have studied, it is that the successful control of regulatory activity is directly linked to the political determination to exercise this type of control.

Where we are now

The mandate of the Secretariat on Deregulation is to:

- ensure application of the policy governing regulatory activity which consists essentially in tightening up the process of development of government regulations;
- request that government departments and agencies prepare their three-year plans covering the review of regulations in accordance with the regulatory policy, study the content of these plans, report to the Cabinet and ensure follow-up;
- examine acts and regulations in light of the provisions of the regulatory policy and make appropriate recommendations to the Priorities Committee or to the Cabinet;
- recommend administrative simplification measures in the application of acts and regulations affecting businesses and individuals and promote their implementation by government departments and agencies;
- coordinate certain horizontal dossiers such as the streamlining of permits and authorizations issued to businesses;
- receive advice and comments from the business community regarding regulatory activity;
- keep abreast of experiences outside of Quebec in the area of regulations.

Under the authority of the Secretary General of the Executive Council, the Secretariat on Deregulation was placed under the responsibility of the Minister of State for the Economy and Finance when the government was formed on January 29, 1996.

Process

The approval process

Each government department or agency responsible for the application of an act is also responsible for the attendant regulations.

Planning

At the outset, the content of a draft regulation is conceived by the directorate or directorates concerned of the government department or agency. Internal approval processes can vary from one department to another. It is at this stage that the problem must be stated and the alternatives to the regulatory solution must be analysed. Also, the impacts on businesses must be evaluated and consultations must be held with the clienteles affected, with respect to regulatory and non-regulatory solutions.

Drafting

The choices made by the government department or agency are then expressed in the form of a draft regulation prepared by the Legal Affairs Directorate.

The draft regulation is then forwarded to the Regulations Office of the Department of Justice, which verifies the following points:

- the Act under which the regulation is proposed must authorize the sponsoring department to make the regulation;
- the regulation must be in harmony with the existing acts and regulations;
- the regulation must be juridically appropriate to the object pursued, be coherent and meet the standards of draftsmanship.

Ministerial approval

The Deputy Minister and the Minister approve the draft regulation and the Minister signs the brief to the Cabinet that accompanies the draft regulation. This brief must meet the requirements of the policy governing regulatory activity:

- (a) establish that a problem exists;
- (b) pinpoint relevant regulatory and non-regulatory solutions, including market mechanisms, and compare their advantages and disadvantages;
- (c) demonstrate that the government department or agency has consulted individuals and the businesses concerned, especially SMEs, with respect to possible solutions and indicate the outcome of these consultations;

- (d) show that the solution proposed focuses more on the objectives (or results) to be attained than on the means to be adopted;
- (e) show, when the solution proposed is likely to impose on SMEs administrative and financial costs that are relatively heavier than those borne by large enterprises, that the solution provides for different requirements, geared to the size of the businesses in question;
- (f) show, when the solution proposed is likely to impose on SMEs administrative and financial costs that are relatively heavier than those borne by large enterprises, that the solution provides for different requirements, geared to the size of the businesses in question;
- (g) show, when the solution proposed is aimed at businesses, especially SMEs, that this solution does not impose more stringent requirements than those adopted by Quebec's leading trading partners;
- (h) demonstrate that the advantages of the proposed solution offset the disadvantages or costs, indeed, that the regulation achieves the greatest possible net advantage.

In the case of draft legislation containing regulatory powers, the brief to the Cabinet must establish, at the very least, that the proposed legislation takes into account the requirements mentioned in (a) and (b) and in (d) to (g).

Cabinet approval

At this stage an internal consultation within the government is formally carried out. The Treasury Board, the Department of Finance, the specialized secretariats or the sectorial departments may be asked to advise the Executive Council on the draft regulation.

The Secretariat on Deregulation issues a notice of compliance with the policy governing regulatory activity and the dossier is submitted to the Cabinet for decision. If the decision is favourable, the draft regulation is published in the *Gazette officielle du Québec* for consultation.

Approval of the regulation

At the end of the consultation period, usually 45 days, the approval process resumes and the responsible minister forwards the regulation to the Executive Council for adoption. The brief to the Cabinet must specify the outcome of these consultations and any amendments made to the draft regulation.

On the advice of the Secretariat on Deregulation and other parties whose views have been sought by the General Secretariat, the Cabinet decides whether or not to adopt the regulation.

Registration and publication

The Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*. A proposed regulation subject to provisions in the *Regulations Act* must, at the time of pre-publication in the *Gazette officielle du Québec*, be accompanied by a notice indicating:

- a) its objective or the problem it is deemed to solve;
- b) its impact on individuals and businesses, especially SMEs;
- c) the person to contact to obtain further information.

Public consultation

The only consultation formally determined in the *Regulations Act* is the publication of the draft regulation in the *Gazette officielle du Québec*. The Act stipulates a 45-day period before the government can adopt a regulation in its final form.

Some regulations are, however, exempted from the pre-publication requirement. These regulations deal with internal management, the exercise of borrowing powers or the management of human resources. Also, a regulation can be enacted without pre-publication if the urgency of the situation requires it or if the proposed regulation is designed to establish, amend or repeal norms of a fiscal nature.

In addition, the policy governing regulatory activity requires government departments and agencies to consult the clienteles concerned with respect to regulatory and non-regulatory solutions. The form these consultations take is, however, left to the discretion of the government department or agency.

Evaluation

Evaluation of the existing regulations is done as part of the three-year plan covering the review of regulations, which is updated each year. The regulatory power stipulated in the statutes is also subject to review.

The review is conducted with a view to significantly alleviating the regulatory burden and includes the abrogation of provisions.

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NEW BRUNSWICK

Reform

How we got started

In January 1994, the New Brunswick government approved a deregulation initiative to remove unnecessary regulatory impediments that frustrate individual New Brunswickers and the business community, and that complicate their daily lives. The initiative includes a review of existing Acts and regulations, as well as establishment of a process for evaluating new proposals.

Our aim

The government wants to reduce the current regulatory burden on business and individuals by eliminating unnecessary impediments that make it difficult to

- establish and operate businesses in the Province of New Brunswick;
- receive government services; or
- efficiently operate government organizations.

Regulatory impediments are viewed in the broadest context. They include, but are not limited to, the following: redundant or obsolete Acts, regulations, and related policies and procedures; unnecessary forms and reporting requirements; overly restrictive standards; and unclear or confusing wording. The deregulation initiative is also designed to reduce paper burden and information overload.

The government has set an objective of reducing the regulatory burden by 25 per cent in 1995 and by a further 25 per cent in 1996.

Where we've been

The initial emphasis of the deregulation initiative is on the existing regulatory regime reflected in acts, regulations and related policies and procedures. Government departments, agencies, corporations and commissions (i.e. government organizations) are expected to systematically review all existing acts, regulations and related policies and procedures. This review should assess the effect of these regulatory instruments on economic competitiveness; timely delivery of quality government services; and ensuring the public interest is maintained in such areas as health, safety and environmental quality. The end result should be a reduced, simplified and effective regulatory environment for business and individuals.

Procedures have also been put in place for new legislative proposals to emphasize that particular attention will be given to the potential of proposals for over regulation and the "paper burden". Departments are required to address this area in their legislative proposals.

Government organizations are required to periodically report on the status and achievements of various deregulation proposals approved by the Policy and Priorities Committee.

The New Brunswick business community is highly supportive and involved in the government deregulation initiative through organizations such as the New Brunswick Chamber of Commerce and the Canadian Federation of Independent Business. These two organizations are involved in a series of deregulation surveys and studies with the business community.

Where we are now

The Executive Council Office is responsible for establishing the overall process and guidelines for the deregulation initiative. Government organizations are responsible for selecting the most effective approach for implementing the initiative in their areas of responsibility and for bringing deregulation proposals to the Policies and Priorities Committee of Cabinet for consideration and approval.

Policy analysts in the Executive Council Office advise government organizations on the process and checking any submissions to the Policy and Priorities Committee. The Executive Council Office's Legislative Co-ordinator, as well as the Legislative Drafting Branch of the Department of Justice, review specific legislative proposals for Acts and regulations. Budget analysts in the Department of Finance are consulted when submissions have financial implications.

Deregulation proposals are presented in comprehensive units, such as program areas, and in a manner that ensures a broad understanding of the proposed changes. Government organizations may seek general policy approval for deregulation initiatives before bringing forward specific changes to existing Acts, regulations and policies.

Most government organizations have brought forward deregulation strategies for government approval. These strategies are in various stages of implementation and include changes to Acts and regulations, as well as changes in how government services are provided. The priority is to remove as much red tape, legislative and otherwise, as possible. A revised *Procedures Manual for Executive Council Documents* has also been released to government organizations. As outlined in the Manual, legislative and policy proposals to government must identify the expected regulatory impacts on individuals and business, and discuss whether existing legislation or non-regulatory means could bring about the desired outcome. The government scrutinizes all new proposals to avert over-regulation and paper burden.

The New Brunswick Chamber of Commerce Business Regulations Task Force recently released its final report on the results of its surveys on the impact of government regulation on business. The document includes a series of generic recommendations. Government organizations are currently reviewing the report.

Next steps

The Province will continue to work with the New Brunswick business community on the deregulation initiative. The next phase will include a specific review of two business sectors to identify opportunities to reduce regulatory requirements in these sectors. The Canadian Federation of Independent Business will be assisting government in a study of the two sectors.

Lessons we can share

The deregulation initiative has successfully encouraged government organizations to review their legislative areas and to identify specific deregulation proposals. However, there has been little crossover or horizontal integration between departments. Since business has been particularly concerned about duplication, excessive licensing and paperwork, it is important that mechanisms be found to ensure that horizontal integration occurs. Only then will the benefits of de-regulation be maximized. The review of two business sectors, discussed in the previous section, is designed to ensure that horizontal integration does happen. Deregulation proposals will come directly from these studies through the Canadian Federation of Independent Business for a government response.

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Publications:

Procedures Manual for Executive Council Documents

New Brunswick Chamber of Commerce, Final Report

Process

The approval process

The *Regulations Act* (1983) defines regulation as any regulation, proclamation, rule or order made under the authority of any statute of New Brunswick except those made by a local authority or incorporated company. A department or agency always gets its authority to make a regulation from the Act (or Acts) of the Legislature under which the regulation would apply.

Whoever originates a regulation can decide to initiate the regulatory process at his or her discretion as part of day-to-day departmental business. The *Regulations Act* provides for a Registrar of Regulations. This function is part of the Office of the Attorney General.

New Brunswick's regulatory approval process involves making two submissions to the Executive Council. The purpose of the first is to get approval to draft the regulation; the second is to have the final draft approved.

Submission One: Getting approval to draft

To get permission to draft, the originator must provide certain key information, including the following:

- the problem and the objectives to be met;
- how the regulation will help to achieve these objectives;
- alternatives to regulating;
- the proposed regulation's effect on existing policies, programs, practices and regulations; (If the regulation could have a significant impact in these areas, the originator would probably have to consult with all departments and other interested parties who might be affected.)
- any consequential amendments to existing regulations that might be required; and
- any financial implications associated with the proposed regulation that could affect the government's budgets. (Information on financial implication does not include information on economic effects at this point of the process.)

Early in the regulatory process, the proposed regulation is scrutinized to determine whether it is within the scope of the statute to which it relates, what legal problems might exist, and whether the proposed legislation will produce the intended results.

Planning

There is no formal planning requirement. Each originator initiates regulations according to departmental priorities. However, some advance warning that a department plans to regulate often comes from passage of legislation, Throne or budgetary speeches, or through discussions between ministers and the public.

Submission

The originator prepares a memorandum to the Executive Council. Before sending this memorandum to the Council, the originator sends it to the Departmental Solicitor for an opinion on the legality of the proposed regulation. If necessary, the Solicitor will get a legal opinion from the Constitutional Law Specialist on the proposal's compatibility with the Canadian Charter of Rights and Freedoms.

The memorandum also goes to the Board of Management if the proposed regulation would either involve fees or fines or revenue, or affect the *Financial Administration Act*.

The memorandum (with the Board of Management's decision, if applicable) then goes to the Deputy Minister of the Executive Council Office for approval by the Policies and Priorities Committee. Note that if the proposed regulation is considered to be a housekeeping measure, the deputy minister may waive the requirement for approval by Committee and send the proposal directly for legal drafting.

Cabinet approval

If the proposed regulation is of a substantive nature, the Deputy Minister of the Executive Council Office will place the memorandum before the Policy and Priorities Committee for decision. The Legislative Counsel is always involved at this point. If approved here, the memorandum will go to the Attorney General (Law Reform Division) with instructions to draft the regulation.

Drafting

The originator sends all background information required to draft the regulation to the Registrar of Regulations. Solicitors in the Legislative Drafting Section of the Law Reform Division draft the regulation in English and French.

If, during the drafting process, the substance of the proposed regulation changes significantly from what the Policy and Priorities Committee approved earlier, the Committee has to approve it again.

Submission Two: Approving the draft regulation

Submission

When the Legislative solicitors are satisfied with the draft, it is stamped (in both languages) and sent to the originating minister. He or she then forwards copies of the regulation with a covering memorandum to the Executive Council Office.

Cabinet approval

The Executive Council Office submits the regulation to Cabinet for approval. If Cabinet approves it, an Order in Council is prepared for the Lieutenant-Governor's signature. If the Executive Council of Cabinet raises concerns, the proposed regulation may be withdrawn.

Registration and publication

The regulation is filed with the Registrar of Regulations. It comes into force as soon as it has been filed or at some later date, if specified. The Registrar must publish the regulation in The Royal Gazette within one month of filing, unless otherwise specified.

Notification and public consultation

The only requirement for notifying the public is that the regulation be published in The Royal Gazette once it has been approved under an Order in Council.

There is no formal requirement to consult with the public. Consultation is completely at the discretion of the originator. However, the regulatory process does require consultation within government which, in itself, often obliges the minister to consult with the client group(s) who may be affected.

Evaluation

There are no criteria for evaluating regulations. Each department, when evaluating policy or programs, will decide if the evaluation will examine the regulations associated with them.

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PRINCE EDWARD ISLAND

Reform

How we got started

In response to rapid social and economic changes, the Government of Prince Edward Island established the Cabinet Committee on Government Reform in August 1990. It assigned the Committee the responsibility of conducting an extensive review of policies, programs and services.

In November 1991, as part of this process, the Committee established the Quality Assurance Task Force to review "government's role in the quality assurance environment and to determine the appropriateness of that role."

The Task Force concluded that the most appropriate role for government was not to assume responsibility for quality, but to share responsibility for assuring quality with industry and the public. The report of the Task Force included recommendations that industry assume greater responsibility for the quality of its products.

The Cabinet Committee on Government Reform also established the Task Force on Service Quality to research the "value of service quality, develop a corporate mission statement, establish a Quality Service strategy, and develop a plan of execution." This task force recommended that government focus on the needs of its clients, adopt a corporate vision and work to improve service delivery.

Our aim

The province of Prince Edward Island is committed to creating a regulatory environment that will stimulate and support economic growth and minimize "red tape," while ensuring equitable and balanced protection of individual and organizational rights and interests.

Where we've been

While the Government of Prince Edward Island has not taken any steps to reduce the quantity of regulations by a specific number, it is trying to reduce the red tape associated with regulations.

The work of the Task Force on Quality Assurance has resulted in checklists for evaluating existing and proposed regulations.

The government has made a number of regulatory changes to stimulate and support economic growth and minimize red tape such as:

- the Consumer, Corporate and Insurance Division of the Department of Provincial Affairs and Attorney General introduced amendments to simplify and reduce the amount of information that businesses are required to provide to government;

- consistent with the national and regional movements to deregulate the trucking industry, P.E.I. eliminated motor carriers' operating authorities in 1994; and
- the Planning and Inspection Services Division of the Department of Provincial Affairs and Attorney General is responsible for building and property development standards. It has streamlined regulation and administrative processes, privatized a number of services, decentralized decision making, automated many procedures, extended office hours, and introduced priority inspections, cross-training, quality control procedures and certificates of compliance.

Where we are now

On November 30, 1995, the Premier of P.E.I. announced a regulatory review to examine existing procedures and to recommend ways to streamline regulations with the objective to cut red tape. The review is part of ongoing efforts by government to simplify procedures, improve services and provide one-stop shopping.

Next steps

The Community Consultative Committee, which consists of five government MLAs, is conducting the review. The Committee is holding internal meetings with departments and beginning public consultation in February 1996.

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Publications:

The Management of Quality: An Investment in Our Future, The Report of the P.E.I. Task Force on Quality Assurance, September 1992.

The Quality Imperative, The Report of the P.E.I. Task Force on Service Quality, September 1992.

A Review of Inspection Services in the Planning and Property Development Division, Department of Provincial Affairs and Attorney General, January 1994 (contact: Albert MacDonald, (902) 368-5582).

Process

The approval process

In Prince Edward Island, a regulation is defined as a regulation, rule, order or by-law either made or approved by the Lieutenant-Governor in Council, a minister of the Crown or a government official, under an Act of the Legislature.

Whoever originates a regulation has complete discretion over the regulation-making process.

Planning

Planning related to introducing or amending regulations takes place at a number of levels, including government departments and agencies, the Policy Unit of the Executive Council Office, Cabinet committees, standing or special committees of the Legislative Assembly and, occasionally, professional associations.

Drafting

A representative of the originating body or the department responsible discusses the scope and intent of the proposed regulations with the government's Legislative Counsel.

Submission

A proposed regulation is submitted in draft form to the Executive Council Office. A memorandum signed by both the minister and the deputy head of the department or agency responsible accompanies the proposal and includes information on the following topics:

- the regulation and its objective, in general terms;
- factors contributing to the proposal;
- the events and circumstances leading up to the submission at hand, including references to any previous considerations by Executive Council or its committees,
- the extent of any consultation, and the groups consulted;
- financial implications, if any;
- the effect on other departments;
- the regulation's impact on or relationship to existing legislation, procedure, organizational structures and programs, including information on the need to amend or remove any of these;
- the potential impact of the regulation on the general public or a particular group;

- the direct positive and negative environmental consequences, including the anticipated short- and long-term impact on air, land, water or any other feature of the natural environment, and a clear explanation of the way these elements will be affected;
- measures proposed to prevent or minimize the negative environmental impacts, and steps to be taken to address anticipated resource conflicts;
- federal/provincial implications, if any; and
- whether and how the public is to be notified about the particular proposed regulation.

The Legislative Counsel ensures that the statutory authority exists to make the regulation.

Ministerial approval

The originating minister must approve the submission of the regulation to Executive Council.

Executive Council approval

Regulations are considered for approval at weekly meetings of Executive Council.

Registration and publication

If the regulation is approved, the Executive Council Office arranges to have it signed by the President of the Executive Council and the Lieutenant-Governor, and published in the Royal Gazette. All regulations are consolidated annually.

Notification and public consultation

Prince Edward Island is unique in that it has no mandatory process, other than publication in the Royal Gazette, for either notifying the public of new regulations or holding consultations on proposed regulations. Public notification and consultation take place at the discretion of the originator of the regulation. However, most departments do have their own mechanisms that enable the public to have input to the regulatory process.

There are no prenotification or prepublication processes, and regulations come into force on a date fixed by the Lieutenant-Governor in Council.

Evaluation

The Task Force on Quality Assurance established the Quality Assurance/Regulatory Review Framework, which outlines a number of questions bodies should ask when reviewing or amending existing regulations, or when drafting new regulations. Contact for more information on process:

Contact for more information on process:

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NOVA SCOTIA

Reform

How we got started

Staff in the Department of Justice handle review of regulations. The question of regulatory reform has been discussed internally and some initial steps have been taken to streamline the existing process before examining the broader question. The department decided it was important to make existing regulations consistent before moving to repeal and replace regulations.

Where we are now

The Department of Justice has established a regulation review system designed to achieve as much uniformity in drafting style and language as possible. This is seen as a first step in reforming regulations. The department has prepared a comprehensive manual that sets out form and drafting requirements that all regulation-making departments and bodies must follow. All draft regulations are reviewed and checked for compliance before being submitted to Cabinet.

Next steps

The department is considering revising and consolidating existing regulations that have been amended numerous times but never consolidated into manageable sets. Once the regulations are consolidated and more uniform, the department will make a more general examination of regulatory policy and make suggestions to the government.

Process

The approval process

The *Regulations Act* R.S.N.S. (1989) governs the regulatory process. It defines regulations as those made by the Governor in Council, by a minister or official of a department, or by any board, commission, agency or similar body. However, regulations made by municipalities, other local authorities and certain public corporations are excluded from the definition.

The Act provides for the Registrar of Regulations, as part of the Attorney General's Office, to file and publish regulations.

The decision to make a regulation rests with the originating department. Whoever originates a regulation must have the authority to do so under the particular Act of the Nova Scotia Legislature to which the regulation relates.

Planning

A regulation is developed in response to a situation that has made regulation necessary. No formal planning processes are involved, although the Throne or Budget speeches or the introduction of legislation could signal that the government intends to regulate.

Drafting

Departmental officials draft regulations, usually with the advice of legal services attached to that department. Assigned staff in the Department of Justice then review each proposed regulation to ensure that:

- it is consistent with the Act to which it relates;
- it does not constitute an unusual or unexpected use of the Act; and
- the form and drafting of the proposed regulation are satisfactory.

The Department of Justice's review process has been streamlined and computerized. All submissions must comply with standards set out in a drafting style and procedures manual published in September 1994 and updated in January 1996. Submissions must be accompanied by a computer diskette containing the same text, which is used for revisions and corrections. The text is then placed in a "locked" computer directory. After Cabinet has approved it and the Lieutenant Governor has signed it, the regulation is transferred directly to the Registrar of Regulations for printing.

Tracking mechanisms have been put in place to determine a standard average turnaround time for processing regulations, so that originating departments can plan their time accordingly. A mechanism has also been put in place to handle genuine emergencies on a priority basis.

After the Deputy Attorney General has approved the regulation, it is sent back to the originating department.

Submission and ministerial approval

The responsible minister forwards the regulation to the Clerk of the Executive Council who checks form and citations and then sends it to the Priorities and Planning Secretariat.

The information the minister provides in addition to that contained in the report and recommendation is entirely at his or her discretion. Although there is no standard format for this information, it usually consists of a letter that explains the legal authority for making the regulation, the need for the regulation and its anticipated effect.

Executive Council approval

The regulation goes from the Priorities and Planning Secretariat to Cabinet with or without a recommendation for approval. If the Secretariat recommends against approval, the matter is either stood pending further information or returned to the Minister responsible with an explanation of the problem seen by the Priorities and Planning Secretariat. Again, there is no standard format for attached information for Cabinet. If Cabinet approves it, the regulation will go to the Lieutenant Governor for signature. It then goes to the Registrar of Regulations for registration and publication. The Department of Justice transfers the approved text from its "locked" computer directory directly to the Registrar, who prints the regulation in the *Royal Gazette*. This ensures that the approved text is reproduced exactly.

Registration and publication

Once the regulation has been filed, the Registrar must publish it in the *Royal Gazette* within 30 days, unless the order in council specifies otherwise. Parts of a regulation may not be published in some instances -- for example, if it would be too costly to do so.

All regulations are available for inspection at the office of the Registrar. The public can inspect a regulation during normal business hours.

Notification and public consultation

The originator of a regulation is not required to notify the public that it is developing a regulation. Similarly, consultation is not mandatory. It remains entirely at the discretion of the originator of the regulation. However, consultation with the public and interested parties often does occur as the need for regulation in a particular situation becomes apparent.

A minister is not required as part of this procedure to inform his or her Cabinet colleagues about the extent to which he or she has consulted with the public, about the possible effects of a proposed regulation or about similar issues. The only information he or she must provide is a statement that the proposed regulation is approved as to form and authority, which must be certified by a designated staff member in the Department of Justice.

The regulation must be published in the *Royal Gazette* unless otherwise specified in the order in council.

Evaluation

There are no mandatory processes for evaluating, updating or otherwise assessing the effectiveness of regulations.

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NEWFOUNDLAND

Reform

How we got started

The concept for regulatory reform grew out of the province's Strategic Economic Plan, which was developed in 1992. It outlined 134 action items focused on economic development.

One of these action items committed the government to "remove barriers to entrepreneurship and implement changes to programs, policies and regulations under its control in order to promote and attract investment of small to large scale enterprises."

Our aim

A joint government-business working group, established in January 1993, agreed that regulatory reform should:

- ensure a client-centred approach;
- ease coordination across departments and governments;
- improve efficiency; and
- reduce regulations overall, maintaining only those required to safeguard the public interest.

Where we've been

In early 1994, Cabinet initiated the Regulatory Reform Project. Three elements made this process unique.

1. An independent commissioner was appointed in November 1994 to examine all regulations. The analysis and evaluation were done outside the bureaucracies that develop and administer the regulations, so that a fresh perspective was brought to bear on the issues.
2. Cabinet established a set of objective criteria by which all regulations must be tested. It asked the Commissioner to recommend retaining only those regulations that:
 - are necessary to maintain or enhance public health, order or safety;
 - are necessary to maintain or enhance the environment, or that contribute to the goal of sustainable development;
 - help the province's private sector compete – for example, by encouraging innovation and efficiency in the conduct of business; or
 - are necessary for the effective administration of the government of Newfoundland.

3. The passage of sunset legislation, an act cited as "the Subordinate Legislation Revision and Consolidation Act" has the effect of repealing all regulations on June 30, 1996, unless there is prior re-enactment by the Lieutenant-Governor in Council. This date is later than the original target (December 31, 1995) and recognized the massive effort required to redraft and republish almost 1300 sets of regulations".

The independent Commissioner, Mr. Justice Nathaniel Noel, was appointed in November 1994. A secretariat within the Executive Council Office was established to provide support for the Commissioner. This group initiated extensive discussions with all departments respecting the regulations for which each was responsible.

At first, departments were asked to review all regulations from the perspective of the criteria set for the project. The goal was to reduce the regulatory burden, and to retain only those regulations needed to protect the public interest, as defined by the criteria.

The analysis was conducted in two stages. "Lens One" subjected each regulation to the test of the primary criteria: public health, order and safety; environmental protection; competitiveness of the private sector; and the administration of the government. If the regulation was not needed to meet one of these objectives, it would be recommended for repeal.

If the regulation met the test of the primary criteria, it was subjected to our "Lens Two" test, which analyzed the appropriateness, effectiveness and efficiency of the regulation. This test included additional inquiries into such matters as:

- the relevance of the objective;
- the relevance of the regulation in achieving the objective;
- the role of public law in achieving the objective;
- the usefulness of alternative approaches, such as policy or education;
- the effectiveness of the enforcement regime;
- the efficiency of administration of the regime;
- the existence of evaluative mechanisms; and
- the cost of the regulation, to government and to those regulated, compared to the regulation's benefits to society.

Where we are now

The independent Commissioner examined 441 acts and 2,358 separate sets of regulations and submitted his report to Cabinet on September 30, 1995. He recommended keeping 49 per cent of the regulations as they are, and judged another 5 per cent to be necessary but in need of substantial reduction or change to make them more effective and more efficient. The

Commissioner decided that a full 46 per cent of the regulations were unnecessary. The Commissioner was mindful of significant policy issues arising in some of the recommendations. Where departmental views differed from the recommendation, the Commissioner's report set out the disagreement. In this way, Cabinet's attention was drawn to the need to make decision on the basic policy issue.

In addition to 359 separate reports on individual regulations, the Commissioner provided a report to Cabinet on the regulatory process generally. He recommended making the objectives of the project an integral part of the policy-making aspects of the regulatory process.

Cabinet is likely to complete full review of the 360 reports by February 1996. Implementation measures of the recommendations of the Commissioner in all of the reports will include:

- amending the style, presentation and language of all regulations to be re-enacted;
- drafting all amendments to the content of regulations;
- developing policy in each department where the regulatory process has changed; and
- implementing "post-reform" directions made by Cabinet.

Lessons we can share

Six factors were critical to the success of the project.

1. Even though the sunset legislation had not been passed by the conclusion of the commission work, it imposed strict deadlines. As a result, departments were able to place a higher priority on the task than would have been possible if the work had continued for a long time. In addition, the deadlines meant that the recommendations were not out of date by the time Cabinet had considered them.

However, the strict deadlines were a mixed blessing. At the beginning of the project, the volume of work and the resources available to complete it were not evident. In addition, the process of consulting with departments, which the Commissioner put into place, increased the time needed to complete each report. Because of the magnitude of the work, Cabinet approved extending the project deadline first to July 31, and then to September 30, 1995.

2. Senior members of the provincial Public Service provided near-unanimous cooperation. In starting this project, members of the Public Service in the various departments and agencies had to fit regulatory reform amongst all their other priorities. While the project team and departments did not always agree, departments provided comprehensive responses to the demands of the project under tight deadlines.
3. The Premier provided strong political direction and leadership. Departments were keenly aware that the initiative was a government priority, and this awareness contributed to the level of support for the project's objective. Because of Cabinet commitment to the project, departments believed the project provided a real opportunity to improve regulatory

structures, and individuals felt their suggestions would have a good chance of being enacted into law.

4. There was a high degree of executive involvement at the departmental level. This was crucial to establishing the project as a priority within departments, and to ensuring that research was conducted at the appropriate level. Where senior levels of a department were engaged, the process worked well from beginning to final report. It was also clear that, in those areas where the executive was not sufficiently apprised of the issues or had delegated responsibility to lower levels of the department, the process of reaching a conclusion was more difficult.
5. Project staff displayed enthusiasm and dedication. This initiative was a massive task, which could not have been completed within the time allotted without a major effort. All participants felt that this was an opportunity to do something positive for the Province, in an environment of much negativity about the public sector generally. Their work was very well received, both at the political level and within the bureaucracy.
6. The three elements of this project – the independent commissioner, the criteria and the sunset legislation – significantly shaped the project and ensured its completion in a thorough and timely fashion. The independent commissioner, and staff working outside the line departments, ensured a detached analysis of the regulations. The criteria set by Cabinet provided the objective analytical framework for the work. And the strict time frames arising from the deadlines set by Cabinet, along with the sunset legislation, kept the project on track and kept the recommendations current.

Process

The approval process

Part II of the *Statutes and Subordinate Legislation Act* (1977) defines regulations. It states that regulations can be developed by anyone authorized to do so by an Act. It should be noted that where a statute gives regulation-making authority to a body other than the Lieutenant-Governor in Council, it is unlikely that Cabinet approval will be sought. The *Regulations Act* designates the Legislative Counsel as the registrar for all regulations.

Planning

Whoever originates a regulation does so in response to a perceived need to develop a regulation for a particular situation. No preplanning takes place, although some regulations either respond to legislation or flow from the Throne, Budget or other speeches.

Drafting

The originator prepares draft regulations in consultation with the Department of Justice. The Cabinet process requires the originating department to consult with other departments that might be affected by the proposed regulation. For example, a regulation with financial implications would clearly affect the departments of Finance and Treasury.

Submission and ministerial approval

The originating minister submits the proposed regulation to Cabinet through the Clerk of the Executive Council.

Executive Council approval

The appropriate Cabinet committee(s) generally review all proposals to Cabinet, including regulatory initiatives, when there are policy implications. Cabinet will consider the recommendations of the policy committee(s).

There are no clear guidelines covering what information a minister should present to Cabinet. However, the minister is expected to present all relevant information to his or her colleagues, including information that may not support the proposed regulation. For minor regulations, assurance that the minister has the authority to make the regulation is enough.

The originating minister, or a committee of ministers, submits the proposed regulation for approval. If Cabinet approves the regulation, the Lieutenant-Governor signs the order in council.

Registration and publication

Once signed, the Deputy Clerk sends regulations approved by the Lieutenant-Governor in Council to the Legislative Counsel for registration and publication. Regulations made under other authority would be sent directly to the Legislative Counsel. The regulation comes into force as

soon as it appears in the *Newfoundland Gazette*, unless otherwise specified in the order in council. Publication must take place within one month after filing unless otherwise specified.

Notification and public consultation

There is no requirement to notify or consult with the public while a regulation is going through the approval process. However, where a proposed regulation has major policy implications, consultation does take place. Whoever originates a regulation may use various channels and mechanisms to collect the views of interested parties.

The only public notification required for the final regulation is to have it published in the *Newfoundland Gazette*.

Evaluation

Newfoundland and Labrador have just concluded their Regulatory Reform Project which, in essence, was a massive evaluation of existing regulations. At the moment there is no formal evaluation requirement but the implementation of recommendations from the Regulatory Reform Project may lead to a formalized evaluation structure.

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Publications:

Strategic Economic Plan for Newfoundland and Labrador ... Change and Challenge (June 1992)

YUKON

Process

The approval process

Planning

There is no advance planning of the regulatory agenda, although many regulations flow from the introduction of Acts or from normal government business.

Drafting

Regulations are drafted by the originating department or the Department of Justice. Legislative Counsel reviews all proposed regulations to ensure that they are consistent with the Act or Acts to which they relate and that they have been drafted properly.

Submission and ministerial approval

Draft regulations are submitted to the sponsoring Minister for approval prior to being transmitted to Cabinet. The sponsoring Minister's department is responsible for providing the information necessary for Cabinet to make a decision on the proposed regulation.

Executive Council approval

Proposed regulations are submitted to the Executive Council Office with the approval of the sponsoring Minister for transmittal to, and approval by, Cabinet.

Registration and publication

After Cabinet has approved a regulation, the Executive Council Office sends it with an order in council to be signed by the Yukon commissioner. Whoever originates the regulation must register it with the Regulations Clerk of the Registrar's Office within 15 days after the Commissioner has signed it. Unless otherwise specified, the regulation comes into force on the day it is filed.

The title and the regulation must be published in the *Yukon Gazette* within one month of filing, unless otherwise specified in the order in council. The Registrar's Office keeps a record of all regulations, which can be inspected during normal business hours.

Notification and public consultation

The *Environment Act* requires the Yukon government to notify the public of any proposed regulations, amendments to existing regulations or revocation of any regulations. The sponsoring minister must provide a period of at least 60 days for the public to review the proposed changes.

This is the only formal requirement for public notification and consultation. Departments do, however, consult with the public frequently on proposed regulatory changes, but the extent and nature of this consultation are at their discretion.

Evaluation

No process for evaluating regulations exists. Although evaluations of policies and programs can include regulations, often these evaluations do not extend to that level of detail.

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NORTHWEST TERRITORIES

Process

In the Northwest Territories, regulations are made to support the objectives of various statutes. No policy framework governs the process of making regulations. The process itself is geared only to ensuring that all regulations are legal and enforceable.

The approval process

Departments are responsible for originating any regulations they feel are needed.

The Commissioner in Executive Council and, under certain circumstances, some statutory bodies can originate a regulation.

Planning

The government makes regulations in response to particular situations. The public might receive some warning of impending regulations through Throne or Budget speeches, new legislation, and so on.

Drafting

The deputy minister of the originating department asks the Deputy Minister of Justice to draft a regulation that will meet a particular objective.

Submission and Ministerial approval

The regulation is submitted for approval to the minister responsible for the relevant Act or, where required by the governing legislation, to the Executive Council or the Financial Management Board. In some cases, policy requires the approval of the Executive Council or the Financial Management Board.

Final submission

The Commissioner or other authorized person signs the regulation into force.

Registration and publication

All regulations are published in Part II of the *Northwest Territories Gazette*, which is published monthly.

Notification and public consultation

There is generally no requirement to notify the public about forthcoming regulations other than the requirement to publish them in the *Gazette*. However, certain Acts require that proposed regulations be published before the regulation itself is made.

Some statutes do require a consultative process, but consultation occurs largely at the discretion of the minister. However, departments often consult with affected groups before the regulation is made.

Evaluation

A department will sometimes evaluate regulations when it reviews an Act or the programs to which the regulations apply.

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